## REMARKS/ARGUMENTS

Claims **1 - 12, 14, 16, 17** and **19 - 53** are pending in the present application. No claims were amended, added or canceled. Reconsideration of the claims is respectfully requested.

### I. 35 U.S.C. § 103, Obviousness

The Examiner has rejected claims **1 – 12, 14, 16, 17** and **19 - 53** under 35 U.S.C. § 103 as being unpatentable over Zustak in view of Kuwano. This rejection is respectfully traversed.

This response is a supplement to that filed on May 22, 2008 and provides rebuttal evidence that was not available to the Applicant prior to the mailing of the current Office Action.

It is well established that the factual inquiry under Graham v. John Deere Co., 383 U.S. at 17, 148 USPQ at 467 includes included the following elements: First, a determination of the scope and content of the prior art must be made. Second, the differences between the claims in issue and the prior art must be delineated. Third, the measure of "ordinary skill in the art" with respect to the obviousness of the claims in issue. Most importantly however, the Court went on to delineate a final indicia of non-obviousness: "after an analysis of each of the above considerations, a series of what the court describes as "secondary considerations" must be examined." *Id* 17-18.

The Court included the following inquiries as secondary considerations: the degree of commercial success of the invention that could be causally related to the invention itself, a long-felt but unsatisfied need for the invention, and the failure of others skilled in the art to fulfill that need. *Id* 17-18.

Submitted with respect herein are three declarations presenting rebuttal evidence in support of secondary considerations of non-obviousness. Each declaration is commensurate in scope with claimed invention and establishes a nexus between the claimed invention and the rebuttal evidence contained there within.

The declarations by Samuel A. Greco and Steven G. Johnson each present objective evidence of commercial success in support of non-obviousness. The declarations could not have been submitted in response to the previous Office Action because the present invention was in a testing and research phase and not offered for sale. Furthermore, it was not until after the mailing of the present Office Action that the clear and convincing benchmark of commercial success was achieved, *i.e.,* surpassing the fiscal years sales projections, which occurred within a three month time period. Therefore, it is respectfully asserted that the submission of the present declarations under rule 1.132 is timely.

The declarations by Samuel A. Greco and Steven G. Johnson aver that the presently claimed invention has achieved commercial success in the marketplace.

The declarations by Samuel A. Greco and Steven G. Johnson state that the metric for measuring commercial success is based on the objective standard of per-unit sales over the yearly forecast.

The declaration by Samuel A. Greco states that a second metric for measuring commercial success is based actual per-unit sales over a relatively sales short time period.

The declarations by Samuel A. Greco and Steven G. Johnson aver that the presently claimed invention has achieved its sales and has further achieved a dominant position in the market, to the exclusion of all other hospital room surveillance systems known to them.

The declaration by Edwin E. Carty, a third party without a substantial business relationship with Careview Communication, Inc., has been provided to bolster the statements made by Samuel A. Greco and Steven G. Johnson regarding dominance in the patient monitoring market and asserts that "no solution to patient monitoring problem have received widespread acceptance in the industry."

The declaration by Edwin E. Carty further presents evidence of a long-felt but unsatisfied need for the presently claimed invention.

## II. Conclusion

It is respectfully urged that the subject application is patentable over any combination of Zustak with Kuwano and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

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